
STATUTORY INSTRUMENTS

2010 No. 3026

The Criminal Procedure (Amendment No. 2) Rules 2010

Citation, commencement and interpretation

1. These Rules may be cited as The Criminal Procedure (Amendment No. 2) Rules 2010 and shall come into force on 4th April 2011.

2. In these Rules, a reference to a Part or rule by number alone means the Part or rule so numbered in The Criminal Procedure Rules 2010(1).

Amendments to the Criminal Procedure Rules 2010

3. In Part 4 (Service of documents)—

- (a) in the table of contents, for the title to rule 4.7, substitute ‘Documents that must be served by specified methods’;
- (b) for rule 4.7 (Documents that must be served only by handing them over, leaving or posting them), and the heading to that rule, substitute—

“Documents that must be served by specified methods

4.7.—(1) The documents listed in paragraph (2) may be served—

- (a) on an individual, only under rule 4.3(1)(a) (handing over) or rule 4.4(1) and (2) (a) (leaving or posting); and
- (b) on a corporation, only under rule 4.3(1)(b) (handing over) or rule 4.4(1) and (2) (b) (leaving or posting);

(2) Those documents are—

- (a) a summons, requisition or witness summons;
- (b) notice of an order under section 25 of the Road Traffic Offenders Act 1988(2);
- (c) a notice of registration under section 71(6) of that Act(3);
- (d) notice of a hearing to review the postponement of the issue of a warrant of detention or imprisonment under section 77(6) of the Magistrates’ Courts Act 1980(4);
- (e) notice under section 86 of that Act(5) of a revised date to attend a means inquiry;
- (f) any notice or document served under Part 19 (Bail in magistrates’ courts and the Crown Court);

(1) S.I. 2010/60, amended by S.I. 2010/1921.

(2) 1988 c. 53; section 25 was amended by section 90 of, and paragraphs 140 and 142 of Schedule 13 to, the Access to Justice Act 1999 (c. 22), section 165 of, and paragraph 118 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 109 of, and paragraph 311 of Schedule 8 to, the Courts Act 2003 (c. 39).

(3) 1988 c. 53; section 71(6) was amended by section 109 of, and paragraph 317 of Schedule 8 to, the Courts Act 2003 (c. 39).

(4) 1980 c. 43; section 77(6) was substituted by section 109 of, and paragraph 218 of Schedule 8 to, the Courts Act 2003 (c. 39).

(5) 1980 c. 43; section 86 was amended by section 51(2) of the Criminal Justice Act 1982 (c. 48) and section 97(3) of the Access to Justice Act 1999 (c. 22).

- (g) notice under rule 37.15(a) of when and where an adjourned hearing will resume;
 - (h) notice under rule 42.5(3) of an application to vary or discharge a compensation order;
 - (i) notice under rule 42.10(2)(c) of the location of the sentencing or enforcing court;
 - (j) a collection order, or notice requiring payment, served under rule 52.2(a).
- (3) An application or written statement, and notice, under rule 62.9 alleging contempt of court may be served—
- (a) on an individual, only under rule 4.3(1)(a) (by handing it to him or her);
 - (b) on a corporation, only under rule 4.3(1)(b) (by handing it to a person holding a senior position in that corporation).”; and
- (c) for rule 4.9(1) (Service by another method), substitute—

“**4.9.**—(1) The court may allow service of a document by a method—

- (a) other than those described in rules 4.3 to 4.6 and in rule 4.8;
- (b) other than one specified by rule 4.7, where that rule applies.”.

4. For Part 8 (Objecting to the discontinuance of proceedings in a magistrates’ court), substitute the Part as set out in Schedule 1 to these Rules.

5. In the note to rule 15.1 (Application for a preparatory hearing), omit the last sentence.

6. In Part 22 (Disclosure)—

- (a) for rule 22.4 (Defence disclosure), and the note to that rule, substitute—

“**22.4.**—(1) This rule applies where—

- (a) under section 5(6) or 6 of the Criminal Procedure and Investigations Act 1996(7), the defendant gives a defence statement;
- (b) under section 6C of the 1996 Act(8), the defendant gives a defence witness notice.

(2) The defendant must serve such a statement or notice on—

- (a) the court officer; and
- (b) the prosecutor.

[Note. The Practice Direction sets out forms of—

- (a) *defence statement; and*
- (b) *defence witness notice.*

Under section 5 of the 1996 Act, in the Crown Court the defendant must give a defence statement. Under section 6 of the Act, in a magistrates’ court the defendant may give such a statement but need not do so.

(6) 1996 c. 25; section 5 was amended by sections 331 and 332 of, and paragraphs 20 and 23 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). It was further amended by section 119 of, and paragraph 126 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and sections 33 and 41 of, and paragraph 66 of Schedule 3 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) in respect of certain proceedings only. It is further amended by sections 33, 41, and 332 of, and paragraph 66 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(7) 1996 c. 25; section 6(3) was repealed by paragraphs 20 and 24 of Schedule 36 and Part 3 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).) For transitional provisions and savings, see paragraph (2) of Schedule 2 to S.I. 2005/950.

(8) 1996 c. 25; section 6C was inserted by section 34 of the Criminal Justice Act 2003 (c. 44).

Under section 6C of the 1996 Act, in the Crown Court and in magistrates' courts the defendant must give a defence witness notice indicating whether he or she intends to call any witnesses (other than him or herself) and, if so, identifying them.]”;

- (b) for rule 22.8 (Unauthorised use of disclosed material), substitute—

“**22.8.**—(1) This rule applies where a person is accused of using disclosed prosecution material in contravention of section 17 of the Criminal Procedure and Investigations Act 1996**(9)**.

(2) A party who wants the court to exercise its power to punish that person for contempt of court must comply with the rules in Part 62 (Contempt of court).

(3) The court must not exercise its power to forfeit material used in contempt of court unless—

(a) the prosecutor; and

(b) any other person directly affected by the disclosure of the material,

is present, or has had at least 14 days in which to make representations.”;

- (c) in the note to rule 22.8 (Unauthorised use of disclosed material), omit the final paragraph;

- (d) in rule 22.9 (Court’s power to vary requirements under this Part), in paragraph (b), after ‘defence statement’, insert ‘, or a defence witness notice,’; and

- (e) in the ‘Summary of disclosure requirements of Criminal Procedure and Investigations Act 1996’ at the end of Part 22 (Disclosure), in the section headed ‘Defence disclosure’—

- (i) for the first paragraph substitute—

“Under section 5 of the 1996 Act, in the Crown Court the defendant must give a defence statement. Under section 6 of the Act, in a magistrates’ court the defendant may give such a statement but need not do so.

Under section 6C of the 1996 Act, in the Crown Court and in magistrates’ courts the defendant must give a defence witness notice indicating whether he or she intends to call any witnesses (other than him or herself) and, if so, identifying them.”;

- (ii) for the last two paragraphs, beginning ‘*Under section 11 of the 1996 Act***(10)**,’ substitute—

*“The time for service of a defence witness notice is prescribed by section 12 of the 1996 Act**(11)** and by the Criminal Procedure and Investigations Act 1996 (Notification of Intention to Call Defence Witnesses) (Time Limits) Regulations 2010**(12)**. It is not more than 14 days after the prosecutor discloses material under section 3 of the 1996 Act**(13)**, or serves notice that there is no such material to disclose.*

A defence witness notice that identifies any proposed defence witness (other than the defendant) must—

(9) 1996 c. 25; section 17 was amended by section 331 of, and paragraphs 20 and 33 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(10) 1996 c. 25; section 11 was substituted by section 39 of the Criminal Justice Act 2003 (c. 44) and amended by section 60(2) of the Criminal Justice and Immigration Act 2008 (c. 4).

(11) 1996 c. 25; section 12 was amended by sections 331 of, and paragraphs 20 and 28 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(12) S.I. 2010/214.

(13) 1996 c. 25; section 3 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 32 and section 331 of, and paragraphs 20 and 21 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

- (a) *give the name, address and date of birth of each such witness, or as many of those details as are known to the defendant when the notice is given;*
- (b) *provide any information in the defendant's possession which might be of material assistance in identifying or finding any such witness in whose case any of the details mentioned in paragraph (a) are not known to the defendant when the notice is given; and*
- (c) *amend any earlier such notice, if the defendant—*
 - (i) *decides to call a person not included in an earlier notice as a proposed witness,*
 - (ii) *decides not to call a person so included, or*
 - (iii) *discovers any information which the defendant would have had to include in an earlier notice, if then aware of it.*

Under section 11 of the 1996 Act, if a defendant—

- (a) *fails to disclose what the Act requires;*
- (b) *fails to do so within the time prescribed;*
- (c) *at trial, relies on a defence, or facts, not mentioned in the defence statement;*
- (d) *at trial, introduces alibi evidence without having given in the defence statement—*
 - (i) *particulars of the alibi, or*
 - (ii) *the details of the alibi witness, or witnesses, required by the Act; or*
- (e) *at trial, calls a witness not identified in a defence witness notice,*

then the court or another party at trial may comment on that, and the court may draw such inferences as appear proper in deciding whether the defendant is guilty.

Under section 6E(2) of the 1996 Act(14), if before trial in the Crown Court it seems to the court that section 11 may apply, then the court must warn the defendant.”.

- 7. In rule 35.2(1)(b) (Content of application or notice), for ‘; and’, substitute ‘.’.
- 8. In Part 42 (Sentencing procedures in special cases)—
 - (a) in the table of contents, for the title to rule 42.3, substitute ‘Notification requirements’;
 - (b) for rule 42.3 (Defendant’s duty to notify information to police), and the heading and note to that rule, substitute—

“Notification requirements

42.3.—(1) This rule applies where, on a conviction, sentence or order, legislation requires the defendant—

- (a) to notify information to the police; or
- (b) to be included in a barred list.

(2) The court must tell the defendant that such requirements apply, and under what legislation.

[Note. For the circumstances in which a defendant is required to notify information to the police, see—

(14) 1996 c. 25; section 6E was inserted by section 36 of the Criminal Justice Act 2003 (c. 44).

- (a) *Part 2 of, and Schedule 3 to, the Sexual Offences Act 2003(15) (notification after conviction of a specified sexual offence for which a specified sentence is imposed);*
- (b) *Part 4 of the Counter Terrorism Act 2008(16) (notification after conviction of a specified offence of, or connected with, terrorism, for which a specified sentence is imposed).*

For the circumstances in which a defendant will be included in a barred list, see paragraphs 1, 2, 7, 8 and 24 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006(17). See also paragraph 25 of that Schedule(18).

These requirements are not part of the court's sentence.]”; and

- (c) in the note to rule 42.8 (Requests for medical reports, etc)—
 - (i) for paragraph (f), substitute—

“(f) section 157 of the Criminal Justice Act 2003(19), under which the court must usually obtain and consider a medical report before passing a custodial sentence if the defendant is, or appears to be, mentally disordered;

(g) section 207 of the 2003 Act(20) (in the case of a defendant aged 18 or over), or section 1(1)(k) of the Criminal Justice and Immigration Act 2008(21) (in the case of a defendant who is under 18), under which the court may impose a mental health treatment requirement.”;
 - (ii) in the fourth paragraph from the end of the note, after ‘*the purposes of (f)*’, insert ‘*and (g)*’.

9. For Part 62 (Contempt of court), substitute the Part as set out in Schedule 2 to these Rules.

10. In rule 68.7(1) (Adaptation of rules about introducing evidence)—

- (a) in paragraph (a), for ‘(special measures directions)’, substitute ‘(measures to assist a witness or defendant to give evidence)’;
- (b) omit paragraph (b); and
- (c) re-number paragraphs (c) to (e), as paragraphs (b) to (d).

11. In the note to rule 76.7 (Costs on an application)—

- (a) at the end of paragraph (c), omit ‘and’;
- (b) at the end of paragraph (d), after ‘1965’, insert ‘; and’; and
- (c) insert at the appropriate place—

“(e) section 4(7) of the Dangerous Dogs Act 1991(22).”.

12. In the preamble to The Criminal Procedure Rules 2010—

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- (15) 2003 c. 42; Schedule 3 was amended by article 2 of S.I. 2007/296, section 63(2) of, and paragraph 63 of Schedule 6 to, the Serious Crimes Act 2007 (c. 27), section 148(1) of, and paragraphs 53 and 58 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4) and section 177(1) of, and paragraph 62 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25). Other amendments to Schedule 3 are not relevant to these Rules.
 - (16) 2008 c. 28.
 - (17) 2006 c. 47; paragraphs 1, 2, 7 and 8 of Schedule 3 were amended by section 89 of the Policing and Crime Act 2009 (c. 26), paragraph 2 was also amended by section 81 of the 2009 Act. Paragraph 24 was amended by article 2 of S.I. 2008/3050.
 - (18) 2006 c. 47; paragraph 25 of Schedule 3 was amended by article 3 of S.I. 2008/3050 and section 81 of the Policing and Crime Act 2009 (c. 26).
 - (19) 2003 c. 44.
 - (20) 2003 c. 44; section 207 was amended by article 4(2) of, and paragraph 7 of Schedule 5 to, S.I. 2009/1182 and article 14(a) and (b) of, and Part 1 of Schedule 5 to, S.I. 2010/813.
 - (21) 2008 c. 4.
 - (22) 1991 c. 65.

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- (a) in the first column, headed 'Rule', insert, in the appropriate place, '62.16'; and
- (b) in the second column, headed 'Power', insert, beside '62.16', 'Section 19 of the Criminal Procedure and Investigations Act 1996(23)'.

13. In the Arrangement of Rules contained in The Criminal Procedure Rules 2010, for the entry for Part 8 (Objecting to the discontinuance of proceedings in a magistrates' court), substitute 'Discontinuing a prosecution'.

*Judge, C.J.
Hooper, L.J.
Thomas, L.J.
Openshaw, J.
Charles Wide
Roderick Denyer
Stephen Dawson
Nicholas Moss
Tessa Szagun
Keir Starmer
Patrick Gibbs
Tom Little
Michael Caplan
Derek French
James Barker-McCardle
Jeremy Corbett
James Riches*

I allow these Rules, which shall come into force on

20th December 2010

Kenneth Clarke
Lord Chancellor

(23) 1996 c. 25; section 19 was amended by section 109 of, and paragraph 377 of Schedule 8 to, the Courts Act 2003 (c. 39), section 331 of, and paragraphs 20 and 34 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 15 of, and paragraph 251 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).